IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.228 of 2003

RAJNATH KUMAR, SON OF JAILAL, RESIDENT OF VILLAGE-BEERPUR, P.O. NAGWAN, P.S. NAUBATPUR, DISTRICT – PATNA
OPPOSITE PARTY NO./APPELLANT.

Versus

1. DEOWANTI DEVI, WIFE OF LATE AKHILESH GIRI, RESIDENT OF VILLAGE GOKHAULPUR MATHIYA, P.S. BIHTA, DISTRICT PATNA
2. KHUSBOO KUMARI
3. GURIYA KUMARI

BOTH MINOR DAUGHTERS OF LATE AKHILESH GIRI OF VILLAGE –GOKHAULPUR MATHIYA, P.O & P.S. BIHTA, DISTRICT PATNA AND UNDER GUARDIANSHIP OF MOTHER NAMELY MOST. DEOWANTI DEVI, WIFE OF LATE AKHILESH GIRI

-------- CLAIMANTS-RESPONDENT

4. DHARMENDRA KUMAR YADAV, SON OF RADHYEY YADAV, RESIDENT OF VILLAGE SRI RAMPUR TOLA, P.O & P.S. BIHTA, DISTRICT PATNA (DRIVER OF THE JEEP B.R.13P-0138)
5. SAGUNI RAI, SON OF LATE SHASHI RAI (OWNER OF JEEP No. BR-13P-0138) RESIDENT OF VILLAGE SRI RAMPUR TOLA P.O. & P.S. BIHTA, DISTRICT PATNA
6. AYODHAYA RAI SON OF BHAUCHAND RAI (OWNER OF TRUCK NO. B.E.Q.4161) RESIDENT OF VILLAGE BIGRAHPUR, NEAR AGRICULTURE FORM, P.O. , C.P.O AND P.S. JAKKANPUR, DISTRICT PATNA.
7. DIVISIONAL MANAGER, UNITIED INSURANCE COMPANY LTD. DIVISION N.1, TIMES OF INDIA BUILDING P.O. G.P.O., P.S. GANDHIMAIDAN, DISTRICT – PATNA.
8. RAVINDRA KUMAR, S/O NAND KISHORE PRASAD (DRIVER OF TRUCK NO. BRQ-4161, RESIDENT OF VILLAGE BALMIKINAGAR, DISTRICT WEST CHAMPARAN, AT PRESENT VILLAGE SARANDA, P.O. & P.S. MASAURHI, DISTRICT PATNA

------O.P. - RESPONDENTS

For the petitioner : Mr. Manohar Pd. Singh, Adv.
Mr. Nagendra Kumar, Adv.

For the respondents : Mr. Durgesh Kumar Singh,Adv.(Insurance)
Mr. Saroj Kumar Singh (Claimants) Respondent No.6.

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10. 24/10/2008 Appellant has challenged the order dated 28.5.2003 passed by Sri Shiv Kumar Prasad, VIIIth Additional District & Sessions Judge-Cum-Presiding Officer, Motor Accident Claims Tribunal, Patna, in Claim Case No. 07/2002, whereby and

whereunder, he has directed the appellant Rajnath Kumar to pay interim compensation of Rs. 25,000/- under Section 140 of the Motor Vehicle Act to the Claimants. Respondents No. 1 to 3 have filed Claim Case No. 07/2002 against the appellant and others. It is stated that at about 11.30 A.M., when the Jeep bearing Registration No. BR-13P-0138 which according to the Claimants was being driven rashly and negligently, turned down on the North side of the road in a ditch causing injuries to one Akhilesh Giri and another person namely Prasad Rai was thrown on the road. In the meantime, a truck bearing registration No. B.E.Q-4161 which was also being driven rashly and negligently crushed another passenger Prasad Rai. Prasad Rai died on spot whereas Akhilesh Giri died subsequently during course of his treatment.

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For the present, issue is limited to the impugned order whereby a petition under Section 140 of the Motor Vehicles Act (hereinafter referred to as the 'Act') has been disposed of by the learned Tribunal in respect of interim compensation to the Claimants who happen to be the legal heirs of the deceased and for that purpose, liability of payment of the interim compensation, so assessed under the provision, has been equally divided into the owner of the Jeep and the insurer of the Truck.

It appears that two claim cases have been filed arising out of the aforesaid occurrence. Claim case No. 07/2002 has

been filed by the respondents No. 1 to 3 being the legal representatives of the deceased Akhilesh Giri and the other Claim Case 20/2002 was filed by the legal representative of the deceased Prasad Rai who died on the spot. Both the cases are on similar facts and are being tried by the same Tribunal. Similar but separate orders have been passed for disposal of the petition under Section 140 of the Act, however, on different dates. In the present case, impugned order is dated 28.5.2003 while in the other case, the order was passed by the Tribunal on 16.4.2003. In both the cases the appellant being the owner of the Jeep has been fastened with the liability to pay Rs. 25,000/- being half of the total assessed amount. The appellant, against the order dated 16.4.2003 passed by the Tribunal in Claim Case No. 20/2002, preferred Miscellaneous Appeal No. 424 of 2003 which has been disposed of by order dated 18.7.2008 by a Bench of this Court. Present matter is on identical footing. Facts of both appeals are one and the same as both the Claim Cases arise out of the same occurrence, though, with regard to the different deceased persons having died in the same accident.

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The remaining Rs. 25,000/-, being another half of the total interim compensation of Rs. 50,000/-, is to be paid by the Insurer of the Truck. There is no challenge over that part of the order in this appeal.

So far the amount to be paid by the owner of the Jeep

as stated aforesaid, with regard to Claim Case No. 20/2002, Misc. Appeal No. 424 of 2003 was preferred by the appellant. A Bench of this Court while disposing of that appeal by the order dated 18.7.2008 has observed and recorded the finding as under:

xx xx xx

"It has been brought to the notice that payment of Rs.25,000/- has been made by the concerned Insurance Company of the truck and so there is no challenge on that part.

So far payment of remaining Rs. 25,000/- to be paid by the owner of Jeep in question is concerned, both the appellant as well as respondents Saguni Rai, Dharmendra Kumar Yadav, Ayodhya Rai and Ravindra Kumar in addition to United India Insurance Company has been made Opposite parties. As per claim petition, Saguni Rai, was owner of the jeep No. BR 13 P-0138 at the relevant time of the accident. The petitioner-appellant Raj Nath Kumar is said to be owner of the jeep prior to he sold the vehicle to Saguni Rai. Saguni Rai is also said to have subsequently sold the vehicle to third person. In the facts and circumstances, emphasis has been given that impugned order was passed when this appellant Raj Nath Kumar had not made their appearance.

There is execution of service report in respect of issuance of notice on this appellant. After receipt of the notice, this appellant refused to put his signature. At this juncture, emphasis has been given that this liability to pay Rs. 25,000/- by way of ad-interim compensation to the claimants should be fastened on the shoulder of Saguni Rai and not on this appellant.

For the present, after hearing learned counsel for the appellant and learned counsel for the United India Insurance Company, I do not want to go deep into the matter so as to examine merit of their respective cases as to how it could be said that who was owner of the vehicle at the

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relevant time. Rather, let this matter be decided by the Tribunal itself where parties will have ample opportunity to contest the matter by adducing their evidence, both oral and documentary which should be considered in right perspective with the connected facts and circumstances.

For the present, I do not want to interfere with the impugned order. So, the impugned order stands confirmed. However, it shall remain open for the Tribunal to decide the matter and in case the Tribunal holds the respondent Saguni Rai owner of the vehicle at the relevant time, necessary order for refund of money so paid by the appellant be passed"

xx xx xx

The matter being of similar nature arising out of same incidence with the only difference that the Claimants are different, I do not find any reason to come to a different conclusion. Therefore, this appeal is liable to be dismissed in terms of aforesaid observations and finding recorded in Misc. Appeal No. 424 of 2003.

As a result this appeal fails and it is dismissed accordingly.

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S.Ali **(Dr. Ravi Ranjan, J.)**